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HAROLD B. WILLEY, C

No. 742

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

KANSAS CITY SOUTHERN RAILWAY COMPANY,
a Corporation,

Petitioner,

vs.

JAMES H. CAGLE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM H. DEPARCQ,
2055 Rand Tower,
Minneapolis 2, Minnesota,
Attorney for Respondent.

PAT MALLOY,
First National Bldg.,
Tulsa 3, Oklahoma,
CHARLES ALAN WRIGHT,
324 Townes Hall,
Austin 12, Texas,
Of Counsel.

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REASONS FOR DENYING THIS WRIT

Petitioner states that the question to be decided by this Court is:

> "Is misalignment of the coupler a failure to comply with this Act, unless such misalignment is coupled with some defect of appliance of negligence?" [Sic] (Pet. 9.)

This Court has made it very clear that failure of equipment to perform as required by the Safety Appliance Act is in itself an actionable wrong, in no way dependent upon negligence.

O'Donnell v. Elgin, J. & E. Ry., 338 U.S. 384 (1949); *Carter v. Atlanta & S. A. B. Ry.*, 338 U.S. 430 (1949); *Affolder v. New York, C. & St. L. R.R. Co.*, 339 U.S. 96 (1950). Nor is there any confusion on this point in the courts below. They have uniformly held carriers liable in

the circumstances shown here, in accord with the controlling decisions of this Court and with the decision now sought to be reviewed.

White v. Atchison, T. & S. F. Ry., 244 S.W.2d 26 (Mo. 1951), cert. denied 343 U.S. 915 (1952);

Donnelly v. Pennsylvania R. Co., 342 Ill.App. 556, 97 N.E.2d 846 (1951), aff'd 412 Ill. 115, 105 N.E.2d 730 (1952), cert. denied 344 U.S. 855 (1952);

McGowan v. Denver & R. G. W. R. Co., 244 P.2d 628 (Utah 1952), cert. denied 344 U.S. 918 (1953);

Hallada v. Great Northern Ry., 69 N.W.2d 673 (Minn. 1955), cert. denied 350 U.S. 874 (1955).

To present further argument on an issue so clearly settled would be to trespass unduly on the time of a busy Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM H. DEPARCQ,
2055 Rand Tower,
Minneapolis 2, Minnesota,
Attorney for Respondent.

PAT MALLOY,
First National Bldg.,
Tulsa 3, Oklahoma,

CHARLES ALAN WRIGHT,
324 Townes Hall,
Austin 12, Texas,
Of Counsel.